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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/607,227	06/26/2003	William E. Spindler	NSC0001	5896
832	7590	04/06/2007	EXAMINER	
BAKER & DANIELS LLP 111 E. WAYNE STREET SUITE 800 FORT WAYNE, IN 46802			CARRILLO, BIBI SHARIDAN	
		ART UNIT		PAPER NUMBER
				1746
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		04/06/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/607,227	WILLIAM SPINDLER	
	Examiner	Art Unit	
	Sharidan Carrillo	1746	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 08 January 2007.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 37-79 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 37-79 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____.

 | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 47, 62, and 73 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claims 47, 62, and 73 constitute new matter because the specification as filed, fails to teach or suggest a "functional material".

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 37-79 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for cleaning a food processing environment, does not reasonably provide enablement for cleaning a surface or an item of equipment . The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention commensurate in scope with these claims.

The claims embrace an invention which contains any known item or equipment,

which could/can be selected from literally thousands (i.e. tile, ceramic, glass, metal, plastic, wood). It does not appear to be feasible that any item or surface would function in the present invention. Further, for one skilled in the art to reproduce the present invention (which must be possible, if the specification is adequate), there would clearly be undue experimentation to do so in an attempt to figure out which ones work and which ones do not.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 37-79 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 37 is indefinite because it is unclear how the alkaline component present in the second container can raise the pH contents of the second container if the second container already contains the alkaline component. Specifically, if the second container is already alkaline, how can the contents be raised to a pH in the alkaline range. Claims 37 and 57 are indefinite because of "capable of raising" does not positively recite a step of raising the pH. Claim 37 is indefinite because "the contents and the alkaline range lack positive antecedent basis. Claim 57 is indefinite because if the cleaning composition comprises an alkaline component, how can the alkaline component raise the pH of the cleaning composition, since the alkaline component makes up part of the cleaning composition. Claims 37, 57, and 71 are indefinite because the claims fail to positively recite a step of cleaning and disinfecting a surface or an item of equipment.

Claims 42-44 are indefinite because it is unclear what the skilled artisan would consider as "low", "moderately foaming" and "high foaming". Claims 45, 53-54, 68, are indefinite because it is unclear whether the percentage is expressed as weight or volume percent. Claims 47, 62, 73 are indefinite because it is unclear what the skilled artisan would consider as a "functional material". Claims 48-52 , 63-67, and 74-78 are indefinite because it is unclear what the skilled artisan would consider as "oxygen-stable". Claim 52, 67, and 78 are indefinite because it is unclear what the skilled artisan would consider as a "derivative" of diphenyl sulfonate. Claims 56, 70 , 79 are indefinite because the claims recite the amine oxide surfactant, but is dependent on claims 37, 57, and 71 respectively, which fail to recite a surfactant.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 37-51, 53-66, 68-77, and 79 are rejected under 35 U.S.C. 102(b) as being anticipated by Arbogast et al. (5739327).

Re claims 37-40, 57-59 and 71, Arbogast teach a method of cleaning hard surfaces comprising a first chamber comprising hydrogen peroxide and a second chamber comprising an alkaline solution sufficient to maintain the pH to greater than about 8, in the range of 8.5 to 10.5 (col. 9, lines 15-65). Arbogast teaches the

components in a liquid or solid matrix (col. 9, lines 20-25, lines 63-68, Example 7 teaches granular compositions. Re claims 41-44, the limitations are inherently met since Arbogast teach the claimed surfactants. Re claim 45, col. 6, lines 60-63, col. 8, lines 59-60. Re claim 46, the limitations are inherently met since col. 9, lines 5-9 teaches the pH maintained in the acidic range. Re claims 47-51, 62-66, 73-77, refer to col. 8, lines 7-45. Re claims 53-54, 56, 68, 70, 79, refer to col. 8, lines 60-65. Re claims 55, 69, refer to col. 9, lines 10-15. Re claim 60, refer to col. 9, lines 45-47. Re claim 61, refer to col. 9, lines 60-65. Re claim 72, refer to col. 9, lines 50-54.

9. Claims 37-47, and 53-55 are rejected under 35 U.S.C. 102(b) as being anticipated by Rees (5743514).

Rees teaches a method of cleaning a hard surface comprising a first vessel comprising peroxide and a second vessel comprising an alkaline agent (col. 6, lines 10-15) to raise the pH within the range of from 7-13 (claim 18). Re claim 38, refer to col. 2-3 bridging. Re claim 39, refer to col. 3, lines 20-22. Re claim 40, refer to col. 3, lines 25-31. Re claims 41-44, the limitations are inherently met since Rees teaches the addition of surfactants of the cleaning solution. Re claim 45, refer to col. 4, lines 30-35. Re claim 46, refer to col. 3, lines 25-27. Re claim 47, refer to col. 5, lines 65-66. Re claim 53, see col. 11, lines 30-32. Re claim 54, col. 5, lines 50-53. Re claim 55, refer to claim 18.

10. Claims 37-51 and 53-56 rejected under 35 U.S.C. 102(b) as being anticipated by Thompson et al. (6391840).

Re claims 37, 39, Thompson et al. teach a composition for cleaning and

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disinfecting surfaces. Col. 4-5 bridging teaches a two chamber container comprising a)hydrogen peroxide in first chamber and an alkali component in a second chamber, the alkali component raising the pH of the solution to a pH of 11 (col. 14, lines 1-25). Re claim 38, refer to col. 12, lines 7-15. Re claims 40-44, refer to col. 5, lines 5-25. Re claim 45, refer to col. 5, lines 50-55. Re claim 46, refer to col. 5, lines 60-63, col. 14, Example 2. Re claims 47-51, col. 9-col. 10. Re claim 53, example2. Re claim 54, col. 2, lines 50-51. Re claim 55, col. 12, lines 5-15. Re claim 56, col. 9, lines 30-33, lines 55-60, col. 5, lines 50-56, col. 2, lines 45-54.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of

the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

13. Claims 52, 67, and 78 are rejected under 35 U.S.C. 103(a) as being unpatentable over Arbogast et al. (5739327).

Arbogast et al. teach the invention substantially as claimed with the exception of the diphenyl sulfonate. However, it would have been within the level of the skilled artisan to have modified the method of Arbogast to include diphenyl sulfonates since Arbogast teaches that anionic surfactants include sulfonates and linear and branched benzene sulfonates.

14. Claim 52 is rejected under 35 U.S.C. 103(a) as being unpatentable over Thompson et al. (6391840).

Thompson et al. teach the invention substantially as claimed with the exception of the diphenyl sulfonate. However, it would have been within the level of the skilled artisan to have modified the method of Thompson to include diphenyl sulfonates since Thompson teaches that anionic surfactants include sulfonates and linear and branched benzene sulfonates.

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Schaeffer teaches a dental paste. Montgomery teaches a tooth

bleaching composition. Blette et al. teach mixing ammonium hydroxide and peroxide. Farrell teach the alkaline in combination with a peroxide. Begges teaches a composition for cleaning hard surfaces comprising a peroxide and a pH agent. Versluys, Conway, and Ozaki, teaches a two component chamber. Bergquist teaches a cosmetic sachet. Choy teaches a composition for surface cleaning. Smith teaches a two part cleaning composition.

16. The rejections of the claims as being anticipated by Kramer or Ramirez are withdrawn in view of the newly amended claims. All arguments are deemed moot.

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharidan Carrillo whose telephone number is 571-272-1297. The examiner can normally be reached on M-W 6:30-4:00pm, alternating Thursday.

18. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Barr can be reached on 571-272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Sharidan Carrillo
Primary Examiner
Art Unit 1746

bsc



SHARIDAN CARRILLO
PRIMARY EXAMINER